

MARRIAGE IN HAWAII:

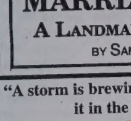
A Landmark Civil Rights Battle

BY SAMUEL DEAN BEHRENS, J.D.

"A storm is brewing...I can smell it in the air!"

You cannot be raised in the heart of Texas and not hear that phrase repeated at least a thousand times. When I heard that as a boy, I got excited because it meant a change was coming. Normally, that meant that the muggy, humid weather was about to be washed away by a late-afternoon thunder-shower. However, on rare occasions, that warning meant to close all the windows, pull the cars in the garage and get under a mattress because a twister had been sighted or we were in the path of a hail storm.

And right now, that phrase is the appropriate warning to all lesbian and gay people in America. When I saw the headlines: **CALIFORNIA G.O.P. MOVES TO BAN SAME-SEX MARRIAGES**, I saw signals that a change in the social fabric of America was beginning to take shape. That change could be the refreshing summer shower that clears the air and causes one to breathe easier. Or, the change in weather could be a tempest that sets off a wave of destruction and death! Rest assured, a storm IS brewing...I can smell in the airwaves being broadcast all over this great land of ours.



***In Hawaii, the State Supreme Court has ruled that denying marriage licenses to gay couples is unconstitutional unless the state can prove a "compelling interest."**

***The Family Research Council, a group closely tied to Religious Political Extremists such as James Dobson's, Focus on the Family has stated that gay marriage is "an oxymoron, an ideological inventiond designed . . . toward the goal of government-enforced acceptance of homosexuality."**

***An increasing number of churches perform gay marriage ceremonies. Jewish Temples perform "commitment ceremonies" across the nation.**

***On Thursday, January 4, 1996, Republican Assembly member Pete Knight unveiled amendments to his bill, AB 1982, to prevent California from recognizing same-sex marriages legally performed in other states.**

***A gubernatorial commission in Hawaii has recommended that gay couples be allowed to marry, but the Legislature has not changed the law to allow it.**

***The Episcopal Church is studying gay marriage, and presiding bishop Edmond Browning has said he is "sympathetic" to such a move.**

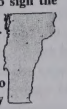
***In the New York Times of March 15, 1995 Lynn D Wardle, a law professor at Brigham Young University, said a "new Utah law was designed to close a loophole that might have compelled local authorities to recognize marriages of gay or lesbian couples-including Utah residents-who traveled to Hawaii to be wed."**

***The sitcom Roseanne featured a marriage between two men. ABC delayed airing the show until 9:30 p.m., an hour and a half after its usual "child-friendly" time of 8 p.m.**

***A few hundred companies and municipalities now extend benefits to gay partners of employees. However, gay activists insist that domestic partner registries and employee benefits do not equal legal marriage.**

***The Japanese-American Citizens League, along with many national organizations, endorsed the Marriage Resolution which simply states: "Because marriage is a basic human right and an individual personal choice, Resolved, the State should not interfere with same-gender couples who choose to marry and share fully and equally in the rights, responsibilities, and commitment of civil marriage."**

***In Brattleboro, Vermont, Daniel Bellow of the Reformer Staff reports that the Quakers of the Putney Friends Meeting, decrying "the injustice of Vermont law, which does not allow a same-sex couple to obtain a marriage license," may start refusing to sign the state license of any marriages they perform. In an open letter to state legislators and other local religious groups, the Friends "call upon all people to stand for justice and equality on this issue."**



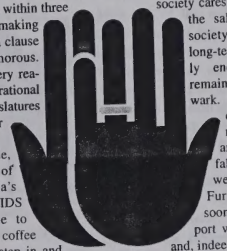
The Quakers have touched the nerve on which the Opposition feels the most pain. By granting legal status to the loving, committed relationships of lesbian and gay couples, the State will declare that a life of love between members of the same sex is EQUAL to a life of love between members of the opposite sex. And that is the thorn that raises all of the issues.

Marc Alexander, director of the Hawaii Catholic Conference, revealed this "outrage at equality" when he stated that "lower relationships" such as those between homosexuals, don't rise to the "same level" as a marriage commitment by couples of the opposite sex. This smacks of religious bigotry and intolerance.

In a letter to *USA Today* written on January 3, 1996 from Northport, NY, Henry Robin stated:

"It's amazing. Marriages have come under attack for decades as being old-fashioned, repressive and irrelevant. Now that one group in society, homosexuals, has rediscovered the spiritual value of formally merging the lives and fortunes of two people in love, deeply religious people who had faithfully supported marriage are kicking these natural allies in the teeth. Only yesterday, homosexuals were reviled for being incapable of forming anything more than transient, neurotic, sex-obsessed liaisons. Now, homosexual couples who have been in stable relationships for years, even decades are reviled for wanting legal recognition of their relationships as equal with the marriages of heterosexuals who may have practically just met and are on their third marriage each. When will religion and logic stop being abused by those who hate?"

Pete Knight's reasoning for his bill AB 1982 to forbid same-gender marriages has been called simplistic and ill-considered. Traditional marriages are baby factories. He stated that same-sex couples can't "produce offspring together, [so] they view marriage as just a reservoir of economic perks." I think Mr. Knight should talk to my grandmother who married in her Seventies after she was widowed. I wonder if he would level his scrawny finger at her and say the same thing? In fact, come to think of it, I do not know of any "Sunset Clauses" that are a part of any marriage contract in any of the fifty states. Such a clause would read something like this: "This marriage contract shall be null and void if a child is not born within three years of the date of the making of this contract." Such a clause is seen as almost humorous. Except that this is the very reasoning used by so-called rational laws passed by state legislatures to prevent same-gender marriages!

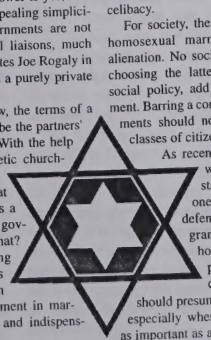


Laurie McBride, Executive Director of LIFE: California's Lesbian/Gay and AIDS Lobby, said, "It's time to wake up and smell the coffee ...government wants to step in and decide [which adults] who you can and can't marry. Churches should choose, not the government. Some churches perform marriages for same-sex couples, some don't. But no government should be able to decide which is legally valid, and which isn't."

The following excerpt from *The Economist Magazine* entitled, "I Take Thee To Be My Lawfully Wedded Partner...," was distributed as a newspaper column by the New York Times Special features on January 6, 1996:

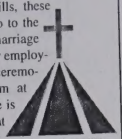
"Can gay marriage be a good idea - now? To understand why the answer is yes, first set aside a view whose appealing simplicity is its undoing. 'Governments are not elected to arrange nuptial liaisons, much less to untangle them,' writes Joe Rogaly in the Financial Times. 'It is a purely private matter.

On this libertarian view, the terms of a marriage contract should be the partners' business, not the state's. With the help of lawyers and sympathetic churchmen, homosexuals can create for themselves what is in all practical respects a marriage; if they lack a government license, so what? The government-limiting impulse motivating this view is admirable. But, in truth, the state's involvement in marriage is both inevitable and indispensable."

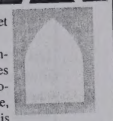


Although many kinds of human pairings are possible, state-sanctioned marriage is, tautologically, the only one which binds couples together in the eyes of the law.

By doing so it confers upon partners' unique rights to make life-or-death medical decisions, rights to inheritance, rights to share pensions and medical benefits; just as important, it confers upon each the legal responsibilities of guardianship and care of the other.



Far from being frills, these benefits and duties go to the very core of the marriage contract; no church or employer or "commitment ceremony" can bestow them at one blow. If marriage is to do all the things that society demands of it, then the state must set some rules.



Just so, say traditionalists: and those rules should exclude homosexuals. Gay marriage, goes the argument, is both frivolous and dangerous: frivolous because it blesses unions in which society has no particular interest; dangerous because anything which trivializes marriage undermines this most basic of institutions.

Traditionalists are right about the importance of marriage. But they are wrong to see gay marriage as trivial or frivolous. It is true that the single most important reason society cares about marriage is for the sake of children. But society's stake in stable, long-term partnerships hardly ends there. Marriage remains an economic bulwark. Single people (especially women) are economically vulnerable, and much more likely to fall into the arms of the welfare state. Furthermore, they call sooner upon public support when they need care - and, indeed, are likelier to fall ill (married people, the numbers show, are not only happier but considerably healthier). Not least important, marriage is a great social stabilizer of men.

Homosexuals need emotional and economic stability no less than heterosexuals - and society surely benefits when they have it. 'Then let them 'unchoose' homosexuality and marry someone of the opposite sex,' was the old answer. Today that reply is untenable.

Homosexuals do not choose their condition; indeed, they often try desperately hard, sometimes to the point of suicide, to avoid it. However, they are less and less willing either to hide or to lead lives of celibacy.

For society, the real choice is between homosexual marriage and homosexual alienation. No social interest is served by choosing the latter. To this principle of social policy, add a principle of government. Barring a compelling reason, governments should not discriminate between classes of citizens.

As recently as 1967, blacks and whites in some American states could not wed. No one but a crude racist would defend such a rule now. Even granting that the case of homosexuals is more complex than the case of miscegenation, the state should presume against discriminating, especially when handing out something as important as a marriage license.

Thus the question becomes: is there a

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...and The Question of Family Values

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compelling reason to bar homosexuals from marriage? One objection is simply that both would-be spouses are of the same sex. That is no answer; it merely repeats the question. Perhaps, then, once homosexuals can marry, marital anarchy will follow? That might be true if homosexual unions were arbitrary configurations, mere parodies of "real" marriage. But the truth is that countless homosexual couples, especially lesbian ones, have shown that they are as capable of fidelity, responsibility and devotion as are heterosexual couples - and this despite having to keep their unions secret, at least until recently.

Would gay marriage weaken the standard variety? There is little reason to think so. Indeed, the opposite seems at least as likely: permitting gay marriage could reaffirm society's hope that people of all kinds settle down into stable unions.

The question of children in homosexual households - adoption, especially - is thorny. That question, however, is mainly separate from the matter of marriage as such. In settling a child with guardians who are not the natural parents, the courts and adoption agencies will consider a variety of factors, just as they do now; a couple's homosexuality may be one such factor. (though it need not, by itself, be decisive).

In the end, leaving aside (as secular governments should) objections that may be held by particular religions, the case against homosexual marriage is this: people are unaccustomed to it. It is strange and radical.

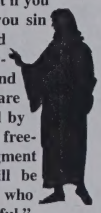
That is a sound argument for not pushing change along precipitously. Certainly it is an argument for legalizing homosexual marriage through consensual politics (as in Denmark) rather than by court order (as may happen in America).

But the direction of change is clear. If marriage is to fulfill its aspirations, it must be defined by the commitment of one to another for richer for poorer, in sickness and in health - not by the people it excludes.

This exclusion from equality is nothing but old-time prejudice and favoritism seen throughout the history of Christendom.

In the New Testament book of James, we hear what the writer declares about those who would unjustly show favoritism. Chapter two, verses 8,9,12 and 13 state:

"If you really keep the the royal law found in Scripture, 'Love your neighbor as yourself,' you are doing right. But if you show favoritism, you sin and are convicted by the law as law-breakers. Speak and act as those who are going to be judged by the law that gives freedom, because judgment without mercy will be shown to anyone who has not been merciful."



Listen up America! Anyone who shows favoritism for those who happen to be of an opposite-sex orientation are considered "lawbreakers" in the sight of God and will be judged accordingly! This form of unjust favoritism is no more "legitimate" than the preference shown to white males who were raised in the "God-fearing" South of the Fifties. Was institutionalized bigotry then and it is institutionalized bigotry that we are facing now! And if that form of bigotry in the South required the landmark Civil Rights Act of 1964, so will the institutional injustice being shown to lesbian and gay couples require a landmark civil rights battle today!

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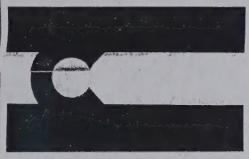
Samuel Dean Behrens is a former minister with the Assemblies of God. He left the ministry when he realized that he was gay. He is currently a director of Christian Gays and Lesbians for Justice. If you would like to join or if you have any questions concerning the Justice Team, Samuel can be reached at 1280 Bison #B9-431, Newport Beach, CA 92660, Phone: 1-714-644-8827, FAX: 1-714-644-4591.

"Gay Marriage" appeared in the Winter 1996 Edition of *The Justice Report,"* a publication of Christian Gays and Lesbians for Justice. Subscription information for this excellent "original" studies journal may be acquired by writing CGLJ, P.O. Box 92442, Pasadena, CA 91109. or call 1-818-798-4758 (Fax: 1-714-644-4591).

Gay Marriage Alert from

EQUALITY COLORADO

It is expected that Doug Lamborn - R - Douglas/El Paso will introduce an anti-gay marriage bill on Wednesday, January 31. We do not have exact language yet, but this will probably be similar to what has been introduced and defeated (1995) in South Dakota, introduced and passed (1995) in Utah and introduced with no votes yet in Alaska, California and Washington. These bills are in anticipation of the upcoming Hawaii Supreme Court decision which is expected to legalize same-sex marriages in Hawaii.



You are urged to contact your representatives and voice your objection to this legislation. Elsewhere in this paper, you will find Equality's Legislative Alert with contact information for state legislators.



Editorial by "Bill" Boushka

Debating "Family Values" Honestly

Well, the "Christian Right" is finally coming out and "just saying it" in defining its battle plan over "family values." Early this January, Martin Mawyer of the Christian Action Network published a little piece debunking the idea that gays and lesbians deserve the "equal rights" to have the state recognize their committed domestic partners as "married." Bluntly, Mawyer writes of the benefits of marriage to heterosexual couples: "These are not doled out so that a couple can more easily express their love for one another. No. Such benefits are granted to ease a family's burdens. They are awarded to encourage married couples to have children." As a corollary, adults not socialized by traditional marriage should subsidize the "real" families with children. After all, this precept follows from the dictum, "to each according to his needs," and that's communism!

Everyone agrees that parents must take care of **their own kids, preferably** in two-parent homes. Indeed, the family is an important teacher of values to the next generation, an important locus for interpersonal growth and for delivery of services to the needy and elderly. But none of this explains why the state should deliberately favor married adults (even gay couples, if gay marriage becomes legal) at the expense of others.

Many families have a particularly rough time in today's individually competitive world of "winner take all." They move out to the exurbs, to find better housing and schools for their kids, then face long commutes and often difficulty competing with singles who can out-hustle them in the workplace during the next downsizing. Though employer-sponsored family health benefits sound like a subsidy, actually they are very expensive, as are all aspects of child care.

So pressure groups like Focus on the Family publish absurd "statistics" on the supposedly enormous affluence and educational advantage of gays and lesbians, who can spend their resources on themselves, compared to hapless heterosexuals. And a respected journal *Tikkun* questions the idea that young adults think they can "make it on their own" and bring "meritocracy" to their personal relationships, leaving a lot of Hoover-like bachelors and old maids.

Accordingly, the politicians offer per-child tax cuts, astonishingly without limit on the number of children. Some, on both the left and right, want to go much further, with mandatory paid maternity and paternity leave, or even with measures re-inventing the "family wage." Who pays for all this? The families that would grab this confiscatory windfall would hardly realize that they are really sponging off others, including heterosexual couples with fewer or no children.



"...[Governmental Benefits resulting from marriage] are not doled out so that a couple can more easily express their love for one another. No. Such benefits are granted to ease a family's burdens. They are awarded to encourage married couples to have children."
---------Martin Mawyer
Christian Action Network

Similarly, many demagogues defend sodomy laws, the tossing of gays out of the military or other sensitive jobs such as teaching, and the attempts to dumb down the media and Internet, as necessary to defend the illusion that only **the gender complementation and altruism of the traditional** family can be the basis of a morally acceptable adult life. Outliers, including gays and lesbians, become second-class citizens as a result of the political requirement that the state subsidize heterosexual marriage.

There are voluntary, free-market ways to meet the needs of families in the workplace and the community, and to recognize the place of the family in cultural expression. The success of some individuals when operating their lives without the usual nuclear family need not disorient those who remain circumscribed by conventional gender roles. We can stay out of one another's ways. The modern world need not play like a zero-sum game.

We welcome the recent willingness of the "Right" to confront the economic and cultural challenges to the family more directly. But an underlying question remains unanswered: Why should people depend on the state or even on social approbation in order to build healthful adult self-images? We have the right to pursue happiness, not to have happiness doled out to us.

Bill Boushka is publisher of *The Quill*, newsletter of Gays and Lesbians for Individual Liberties in Wash. DC.